



OFFICIAL BALLOT TITLE

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 11, OF THE MONTANA CONSTITUTION TO ALLOW THE MONTANA SUPREME COURT TO DISCIPLINE A JUSTICE OR JUDGE FOR VIOLATION OF CANONS OF JUDICIAL ETHICS ADOPTED BY THE COURT.

CONSTITUTIONAL AMENDMENT NO. 13

AN AMENDMENT
TO THE CONSTITUTION
PROPOSED BY THE LEGISLATURE

Attorney General's Explanatory Statement

The Legislature submitted this proposal for a vote. It would amend the Montana Constitution to allow the Montana Supreme Court to censure, suspend, or remove any judge for violating the rules of judicial ethics adopted by the Supreme Court. Currently the Supreme Court may discipline judges for willful misconduct in office or for willful and persistent failure to perform judicial duties. This proposal would authorize an additional ground for the disciplining of judges.

Argument For Constitutional Amendment No. 13

Montana's Judges are bound by the Canons of Judicial Ethics. These ethical standards specify what type of personal conduct is acceptable in conducting judicial affairs. For example, a Judge must promptly decide pending cases (Canon 7), refrain from deciding cases involving relatives (Canon 13) and avoid personal investments in enterprises which may be involved in litigation before him (Canon 26). This code of judicial conduct is designed to ensure fairness and justice for all the people who use Montana's courts. The Canons of Judicial Ethics specifically recognize that the people have a right to expect Montana's judges to abide by the ethical standards set forth in the Canons.

Montana's Judicial Canons have been in effect since 1963. However, there has been little, if any, enforcement of the canons. One reason the canons have not been enforced is because there has been no public entity with the power to investigate alleged judicial misconduct.

The 1972 Constitution appeared to solve this problem by creating a Judicial Standards Commission (Article VII, Section 11). The Commission was empowered to investigate alleged judicial misconduct and recommended that the Supreme Court discipline the offending judge. In 1982, the Montana Supreme Court ruled that the Montana Constitution did not give the Judicial Standards Commission the power to investigate alleged violations of the Canons of Judicial Ethics.

Proposed Constitutional Amendment 13 gives the Judicial Standards Commission the power to investigate alleged violations of the Canons of Judicial Ethics. The Commission received eighteen (18) complaints about the conduct of various Montana judges in 1981 and 1982. Most of the complaints involved alleged violations of the Canons of Judicial Ethics. Proposed Constitutional Amendment 13 will allow the Commission to fully investigate alleged ethical violations and, where necessary, recommend that an offending judge be disciplined.

The public does have a right to expect that its judges abide by the code of conduct set forth in the Canons of Judicial Ethics. The public also has a right to expect that alleged unethical conduct will be fully investigated and disciplinary action imposed by the Supreme Court when necessary. Proposed Constitutional Amendment 13 will ensure, for the first time, that the Canons of Judicial Ethics are enforceable.

Rebuttal of Argument Against Constitutional Amendment No. 13

The opponents to Proposed Constitutional Amendment 13 misrepresent both the effect and the purpose of the amendment.

Present procedures are not adequate to enforce the Canons of Judicial Ethics. The Supreme Court ruled in 1982 that the Montana Constitution did not give the Judicial Standards Commission the authority to investigate ethical misconduct by Judges. Thus, if a citizen complains that a Judge has violated the Canons of Judicial Ethics, the Judicial Standards Commission presently has no authority to investigate the allegation and, if necessary, recommend appropriate disciplinary action.

The opponents argue that impeachment is an adequate means of dealing with judicial misconduct. The opponents argument is without merit.

Impeachment will only occur where a public official is guilty of criminal activity or gross abuse of power. The Canons of Judicial Ethics establish a code of conduct which, if followed, will assure the public of fairness, honesty and integrity in the judicial process. A judge who violates the Canons is not guilty of a crime nor would the violation, in most instances, constitute a gross abuse of power. In short, most ethical violations will not result in impeachment.

This does not mean, however, that judicial ethics violations should go unchallenged. Ethical misconduct which affects the fairness, honesty or integrity of the judicial process should be dealt with through censure or suspension from office. Proposed Constitutional Amendment 13 allows the Judicial Standards Commission and the Supreme Court to impose appropriate disciplinary action when the Canons of Judicial Ethics are violated.

These Arguments Prepared by: Senator Fred Van Valkenburg, Missoula; Representative Gary Spaeth, Silesia; and Steve Brown, Helena.

HOW THE ISSUE WILL APPEAR ON THE BALLOT:

CONSTITUTIONAL AMENDMENT NO. 13

- FOR amending the Montana Constitution to allow the Montana Supreme Court to discipline judges for violating rules of judicial ethics adopted by the court.
- AGAINST amending the Montana Constitution to allow the Montana Supreme Court to discipline judges for violating rules of judicial ethics adopted by the court.

NOTE: The ballot title was written by the Legislature and the explanatory statement by the Attorney General as required by state law. The complete text of Constitutional Amendment No. 13 appears on page 12.

Argument Against Constitutional Amendment No. 13

Constitutional Amendment 13 proposed to make an Amendment in the Judicial Article of The Montana Constitution by adding as an additional ground for removal of a judge the reason that said judge violated the Canons of Judicial Ethics adopted by the Supreme Court of the State of Montana. The reasons for opposing said Amendment are:

1. The Constitution is a broad principled document which should not include specific acts. The Canons of Judicial Ethics adopted by the Supreme Court is formulated by the American Bar Association and presently contains 36 separate canons. Adoption by reference of each of the canons (which are subject to change) should not be included in the Constitution.

2. The present Constitutional provision for disciplining judges is adequate and all matters are left in hands of the Judicial Standards Commission. Montana's Judiciary simply have not provided any reason to change the present workable system.

3. The present reason for disciplining judges, which includes removal from office, is based upon cause for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance. The term willful misconduct in office has been judicially interpreted to mean "any act involving moral turpitude, or any act which is contrary to justice, honesty, principle or good morals, if performed by virtue of office or by authority of office." The Canons of Judicial Ethics provide no greater cause for misconduct in office. In fact, such canons as adopted by the American Bar Association are to serve only as a "proper guide and reminder for judges and is indirectly what the people have a right to expect from them." One is, in fact, simply duplicative of the present habitual intemperate ground for removal in the Constitution because Canon 5 provides a Judge should be temperate."

4. A Canon governs impositions of sentences and provides that when imposing a sentence a Judge should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency. Such standard, if it is one, can lead to discipline of a judge over criminal sentences by the Judicial Commission. That standard is unworkable. Rather, the Judge's decisions in sentencing should be governed by sentence review process and by the electoral process, which in the final analysis provides safeguard to the public of a unpopular Judge.

5. The Constitutional Convention, and the people approving the 1972 Constitution, just recently reflected upon and passed upon Judicial Standards for Judges. For judicial misconduct outside of the office the Constitution in Article V, Sec. 13, reserved to the legislature, either through impeachment or through further legislative action, the removal of public officers, including judicial offices. Thus, another method is provided for law for removal of incompetent judges for any cause.

Rebuttal of Argument For Constitutional Amendment No. 13

The committee has chosen to not write a rebuttal statement.

These Arguments Prepared by: Senator Pete Story, Emigrant; Representative Bob Pavlovich, Butte; and Representative Fritz Daily, Butte.